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IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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<b>In re</b>	:	<b>Chapter 11</b>
	:	
	:	<b>Case No. 18-23538 (RDD)</b>
<b>SEARS HOLDINGS CORPORATION,</b>	:	
<b><i>et al.,</i></b>	:	<b>(Jointly Administered)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>Re: ECF No. 3369</b>

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**CURE OBJECTION OF BUTTERFIELD TECH CENTER LLC/FOODTOWN  
DEVELOPMENT LLC TO TRANSFORM HOLDCO LLC'S NOTICE  
OF ASSUMPTION AND ASSIGNMENT OF ADDITIONAL DESIGNATABLE LEASES**

Butterfield Tech Center, LLC and Foodtown Development, LLC (“Counter-party”),  
through their attorneys, submit this objection (the “Objection”) to the *Notice of Assumption and  
Assignment of Additional Designatable Leases* (Dkt. 3369) (the “Notice”) filed April 25, 2019,

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STId Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

by Transform Holdco, LLC (the “Buyer”). In support of this Objection, the Counter-Party respectfully submits as follows:

### **JURISDICTION**

1. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

### **BACKGROUND**

2. On October 15, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the Court.

3. The Counter-Party and MaxServ, Inc. are parties to various agreements, including an unexpired master lease previously referred to as Store No. 49011 (the “Agreement”) with regard to the premises located at 4755 S. Butterfield, Tucson, Arizona (the “Premises”).

4. On January 23, 2019, the Debtors filed a Supplement Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (Docket No. 1774). In this document, the Debtors listed the cure amount as \$55,205.96.

5. The Counter-Party did not receive notice of the Docket 1774 until after the objection deadline. The Counter-Party alerted counsel that the cure amount was \$61,511.22 (“1<sup>st</sup> Half Property Taxes”).

6. Pursuant to the Agreement, additional amounts for property taxes which became due March 1, 2019 and delinquent April 1, 2019, in the amounts of \$61,853.04 for the taxes and \$10,270.90 for the CAM and NNN reconciliation which were reconciled and billed on April 30, 2019 (“April 2019 Delinquencies”).

7. Docket No. 3369, now lists the cure amount at \$0.00 for the Agreement.
8. Neither the 1<sup>st</sup> Half Property Taxes nor the April 2019 Delinquencies have been paid.

### **OBJECTION**

9. 11 U.S.C. § 365(b)(1)(A) requires that executory contracts are cured of all defaults prior to assumption.
10. Counter-party does not object to the assumption provided the defaults of \$132,459.95 are cured.

### **RESERVATION OF RIGHTS**

11. Counter-party reserves the right to supplement or amend this Objection based upon information acquired by the Counter-party subsequent to its filing. Counter-party also reserves the right to object to adequate assurance information when such information is made available, to exercise all available remedies under the Lease to obtain possession of the Premises (subject to any applicable procedural limitations imposed by the Bankruptcy Code and Rules), and to assert claims against the Debtors (including, but not limited to, administrative expense claims under sections 365(d)(3) and/or 503(b) of the Bankruptcy Code) at the appropriate time.

**CONCLUSION**

WHEREFORE, for the reasons set forth above, Butterfield Tech Center, LLC and Foodtown Development, LLC respectfully request that the Court enter an order consistent with this Objection grant such other and further relief as is just and equitable.

Dated: May 3, 2019

BENESCH, FRIEDLANDER, COPLAN &  
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